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5 ATTORNEYS FOR Debtor

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8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 In re: ) Case No. 13-53491  
12 272 E SANTA CLARA GROCERY, LLC, ) CHAPTER 11  
13 Debtor. ) **SECOND INTERIM AND FINAL**  
14 ) **APPLICATION FOR**  
15 ) **COMPENSATION AND**  
16 ) **REIMBURSEMENT OF EXPENSES**  
17 ) **BY ATTORNEY FOR DEBTOR**  
18 ) **Date: September 24, 2014**  
19 ) **Time: 1:30 p.m.**  
20 ) **Place:**  
21 ) **280 S. First Street, Crt. Rm. 3099**  
22 ) **San Jose, CA 95113**  
23 ) **Judge: Hon. Stephen L. Johnson**

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TO THE HONORABLE STEPHEN L. JOHNSON, UNITED STATES BANKRUPTCY  
COURT JUDGE; THE OFFICE OF THE UNITED STATES TRUSTEE; 272 E SANTA  
CLARA GROCERY, LLC; and all other interested parties:

Campeau Goodsell Smith (“CGS” or “Applicant”), general bankruptcy counsel to 272  
E. Santa Clara Grocery, LLC, debtor-in-possession (“Debtor”) in the above entitled  
bankruptcy case (“Bankruptcy Case”) hereby submits this Second Interim and Final  
Application for Compensation and Reimbursement of Expenses by Attorney for Debtor

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SECOND INTERIM AND FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES BY ATTORNEY  
FOR DEBTOR

1 (“Final Application”), pursuant to sections 328, 331, and 330 of title 11 of the United States  
2 Code, as amended (the “Bankruptcy Code”); Rule 2016 of the Federal Rules of Bankruptcy  
3 Procedure (the “Bankruptcy Rules”); and the Guidelines for Reviewing Applications for  
4 Compensation and Reimbursement of Expenses (the “Compensation Guidelines”)  
5 promulgated by the Executive Office of the United States Trustee pursuant to 28 U.S.C. §  
6 586(a)(3)(A). By this Application, CGS seeks, among other things, an order (I) approving as  
7 interim and final compensation those Chapter 11 attorneys fees incurred and costs expended  
8 by Applicant during the period of November 1, 2013 through the date of the hearing on this  
9 Application (“Application Period”), namely attorneys fees of \$190,302.50 and costs of  
10 \$3,271.08; (ii) approving the Order Granting First Interim Application for Compensation  
11 And Reimbursement of Expenses by Attorney for Debtor (Docket#118) (“Order Approving  
12 First Application”) as final; (iii) approving \$3,575.25 in attorneys fees for preparation of the  
13 First Application; (iv) approving \$5,525.00 in attorneys fees for preparation of the Final  
14 Application; (v) authorizing and ordering Debtor to pay to these sums to Applicant; and (vi)  
15 for such further relief as this court deems proper.

16 In support of this Application, CGS submits the Declaration of William J. Healy  
17 (“Healy Declaration”). In further support hereof, CGS respectfully represents as follows:  
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2 **I. Introduction.**

3 Since the initial meeting with Debtor, commencement of this Bankruptcy Case,  
4 appointment of Applicant as counsel for the Debtor, and throughout the Application Period,  
5 Applicant has served as the Debtor's general bankruptcy counsel. Applicant took a lead role  
6 in preparing, submitting, arguing, and negotiating a number of pleadings relating to the  
7 commencement of the Bankruptcy Case, the administration of the Bankruptcy Case, and the  
8 various aspects of Debtor's use of cash collateral, sale of Debtor's assets, resolution of  
9 disputes with a secured creditor, and business and reorganization efforts. CGS worked  
10 extensively with the Debtor, its representatives, and creditors throughout the Application  
11 Period.

12 **II. Background.**

13 Debtor is a single asset real estate entity and was the owner of real property commonly  
14 know as 272 E Santa Clara Street in San Jose<sup>1</sup>. Debtor's real property was subject to a  
15 commercial lease with Grocery Outlet, Inc. and was subject to a first position deed of trust in  
16 favor of Boston Private Bank & Trust Company ("BPB"), although Debtor was not BPB's  
17 borrower.

18 In approximately December 2012, Debtor contracted to sell the real property. However,  
19 the contracted buyer did not go forward with the sale when it discovered an environmental  
20 issue with the real property. Pre-petition the Debtor was working to resolve the  
21 environmental issue with the real property and conclude the sale.

22 The bankruptcy resulted from an impasse between Debtor and BPB relative to BPB's  
23 demand for a release of Debtor's claims against BPB for its non-disclosure of environmental  
24 issues with the real property and efforts to foreclose. Debtor understood that BPB knew of

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25  
26 <sup>1</sup>Debtor's sale of real property and assumption and assignment of its lease were approved by the  
27 court during the Application Period and the sale closed outside the Application Period  
28 (November 2013). Debtor, after payment of the costs of sale, real property taxes, and  
approximately \$3,300,000 to BPB on its secured claim, now holds approximately \$3,600,000 of  
sale proceeds and \$160,000 in post-petition rent monies.

1 the environmental issues with the real property before it lent monies to Kimomex and knew  
2 these issues remained prior to and during Debtor's foreclosure on the second deed of trust  
3 (pursuant to a loan between Debtor and Kimomex); Debtor's expenditure of substantial sums  
4 of money foreclosing on its second deed of trust, bringing and keeping BPB current, readying  
5 the property for and securing a tenant, and maintaining the tenant's payment on the lease; and  
6 Debtor's various agreements with BPB. This impasse also resulted from BPB's demand that  
7 Debtor's tenant pay all rental income to them, BPB's denial of income from which Debtor  
8 could address the environmental issue preventing the sale of the real property, and BPB's  
9 state court action to proceed with foreclosure.

### 10 **III. Case Initiation and Administration.**

11 In June 2013, Debtor approached Applicant regarding its current situation, its rights and  
12 remedies relative thereto including a potential bankruptcy, and the potential benefits a  
13 bankruptcy, including a potential Chapter 11, may provide to the Debtor and its creditors in  
14 response to BPB's pursuit of foreclosure.

15 Applicant assisted the Debtor to evaluate and understand its rights and remedies in  
16 bankruptcy, assisted the Debtor to prepare for a bankruptcy filing, including preparing  
17 various schedules and required bankruptcy filings, and conferred with Debtor and relative to  
18 numerous matters discussed hereinafter. Applicant conferred with Debtor concerning its  
19 financial circumstances and reorganization alternatives and Debtor's election to file a  
20 Chapter 11 petition to reorganize its affairs.

21 During these proceedings, Applicant assisted Debtor to address various U.S. Trustee  
22 requirements, including but not limited to the Initial Debtor Interview ("IDI"), 341 Meeting  
23 of Creditors, Debtor-in-Possession bank account ("DIP Account"), and Debtor's various  
24 schedules and associated filings. Applicant conferred with Debtor concerning the obligations  
25 required of it pursuant to the Bankruptcy Rules and the U.S. Trustee Guidelines. Applicant  
26 communicated on various subjects with representatives of the U.S. Trustee's office and the  
27 Bankruptcy Clerk's office with respect to issues arising in this case. Applicant also  
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1 conferred with various creditors concerning claims asserted. Applicant regularly conferred  
2 with various other counsel taking part in this case and has regularly conferred with various  
3 creditors concerning developments in this case.

4 In addition, Applicant secured its own employment, the employment of special counsel  
5 to prosecute Debtor's state court action, the employment of a real estate professional to assist  
6 Debtor in the marketing and sale of its real property, and the appointment of Debtor's  
7 Responsible Individual. The cost and expense associated with employment of Applicant,  
8 employment of Debtor's special counsel, and appointment of Debtor's Responsible  
9 Individual were increased as a result of objections asserted by BPB, all of which were  
10 subsequently abandoned. BPB's objections were primarily premised on the allegation that  
11 more information was required notwithstanding BPB was not a direct creditor of the Debtor,  
12 BPB had years of direct dealings with the Debtors of BPB and was familiar with Debtor and  
13 Debtor's history, BPB asserted these objections to harass Debtor, and neither the U.S.  
14 Trustee nor Debtor's four unsecured creditors or limited members objected.

15 Most recently, Applicant assisted Debtor secure court approval of its compromise with  
16 BPB and a dismissal process.

17 In connection with the foregoing, during the Application Period, CGS expended a total  
18 of \_\_\_\_\_ hours, at a cost to the estate of \$\_\_\_\_\_.

#### 19 **IV. Post-Petition Operations.**

20 Applicant assisted Debtor in the preparation of and timely filing of U.S. Trustee  
21 required Monthly Operating Reports and worked with various Debtor, creditor, and an  
22 interested party to confirm that Debtor's real property was in adequately insured.

23 BPB filed multiple applications for 2004 examinations to examine Debtor's members  
24 without ever applying to examine Debtor; filed multiple applications for 2004 examinations  
25 to examine Debtor's members regarding potential preference claims to which it did not have  
26 a security interest and knew were invalid due to Debtor's solvency; filed an application for  
27 examination of Debtor's environmental consultant ERAS Environmental, Inc. and never  
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1 secured an order and notwithstanding BPB's knowledge that ERAS Environmental, Inc.'s  
2 report would be a matter of public records once filed with the County of Santa Clara and it  
3 would be filed upon payment of the outstanding balance of \$6,359.10-which Debtor's  
4 creditor advanced due to BPB's delays in agreeing to pay such balance from cash collateral  
5 and/or rent and which substantially delayed Debtor's receipt of a No Further Action letter  
6 from the County of Santa Clara; and then proceeded with one examination of member and  
7 creditor Andrew A. Lewis for ½ day via video tape (the examination was not officially  
8 concluded and the underlying application did not relate to Mr. Lewis's capacity as Debtor's  
9 manager or Responsible Individual).

10 Applicant's services during the Application Period and relative to post-petition  
11 operations were placed in other categories.

#### 12 **V. Cash Collateral.**

13 Debtor's cash-collateral issues were in flux as of the commencement of this bankruptcy  
14 case because pre-petition BPB had intercepted 100% of Debtor's rent, continued to do so  
15 post-petition, simply refused to substantively engage Debtor in a consensual use of the cash  
16 collateral, including to pay the outstanding invoice of ERAS Environmental, Inc. so ERAS's  
17 report could be finalized and submitted to the County for processing and movement towards  
18 the County's issuance of a No Further Action letter, and then moved for a determination that  
19 post-petition rents were not property of the estate. Applicant assisted Debtor understand and  
20 evaluate the cash collateral issues, including payment to ERAS and BPB's motion, and  
21 successfully opposed BPB's motion. Subsequently, Applicant assisted Debtor retrieve  
22 property of the estate from BPB and secure such funds, secure future rents from Debtor's  
23 tenant, seek BPB's consent to use cash collateral to pay BPB (albeit unsuccessfully), and  
24 prepare a motion for use of cash collateral so Debtor could pay BPB and US Trustee  
25 Quarterly Fees.

26 In addition, post Debtor's sale of Real Property and payment of the undisputed portions  
27 of BPB's claim Debtor held substantial funds in excess of its claims. Applicant, after  
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1 discussion and disclosure to Debtor regarding the applicable law and relative authority,  
2 assisted Debtor's efforts to secure court approval of distributions of undisputed claims.  
3 Debtor's efforts in this regard, although unsuccessful, were designed to benefit the creditors  
4 by avoiding further delays in payment, reduce ongoing interest Debtor would otherwise owe  
5 to these creditors, and provide adequate protection for BPB.

6 In connection with the foregoing, during the Application Period, CGS expended a total  
7 of \_\_\_\_\_ hours, at a cost to the estate of \$\_\_\_\_\_.

## 8 **VI. Asset Sales.**

9 Debtor's primary asset was its real property and associated real property lease. As a  
10 result of Debtor's securing of a No Further Action letter from the County of Santa Clara and  
11 marketing efforts Debtor was able to secure various purchase offers. Applicant assisted  
12 Debtor understand and address various sales issues, including liens for real property taxes,  
13 BPB's disputed lien, and the lease, and assisted Debtor to address inquiries from the buyers,  
14 and prepare and file a motion to sell and motion to assume and assign its lease to buyers on  
15 shortened time. Shortened time was necessary for various reasons, including Debtor's  
16 demand and buyers' agreement to close the sale in an expedited manner.

17 With respect to the Application Period Applicant primarily addressed finalizing the sale  
18 and associated rent issues, lien release, payment issues, and less significant closing issues as  
19 detailed in Applicant's time records.

20 In connection with the foregoing, during the Application Period, CGS expended a total  
21 of \_\_\_\_\_ hours, at a cost to the estate of \$\_\_\_\_\_.

## 22 **VII. Adversary Proceedings/Debtor's Claims.**

23 Debtor's schedules reference various claims, including claims against BPB for non-  
24 disclosure of environmental issues with Debtor's real property (before and after Debtor  
25 became the owner of the real property), potential claims against others that may be  
26 responsible for the environmental issue with the real property, and pending state court  
27 litigation against guarantors of Debtor's promissory note to Kimomex.



1 Applicant assisted Debtor in identifying these various claims, evaluating these various  
2 claims relative to potential prosecution, and securing potential relevant information regarding  
3 these claims. Applicant worked with Debtor and creditor's counsel regarding potential  
4 compromise options relative to Debtor's claims against BPB, participated in a self-mediated  
5 conference between Debtor and BPB, and assisted Debtor evaluate various legal and factual  
6 issues associated with such claim, including but not limited to BPB's claim. In addition,  
7 Applicant conducted research regarding a prosecution of a potential claims against others  
8 that may be responsible for the environmental issue with the real property, including prior  
9 property owners and occupants. Applicant has worked with Debtor and special counsel  
10 regarding the pending state court litigation court litigation against guarantors of Debtor's  
11 promissory note to Kimomex.

12 In connection with the foregoing, during the Application Period, CGS expended a total  
13 of \_\_\_\_\_ hours, at a cost to the estate of \$\_\_\_\_\_.

#### 14 **VIII. Creditor Claims Analysis/Claims Objections.**

15 Debtor's creditors were limited such that initially creditor claims analysis and claims  
16 objections were not anticipated. However, during the Application Period Debtor received  
17 notice of three claims, Internal Revenue Service, County of Santa Clara for real property  
18 taxes, and BPB which, in light of Debtor's prosecution of a disclosure statement and plan  
19 and a sale and unanticipated figures in the claims, required Applicant and Debtor to review  
20 these claims.

21 Applicant reviewed these claims, consulted with Debtor and Debtor's representatives,  
22 and began the process of addressing the unexpected figure in the County of Santa Clara's  
23 claim and BPB's claim which specifically asserted figures and claims opposite of various  
24 agreements with the Debtor, information provided to Debtor, state court filings, and various  
25 filings in this Bankruptcy Case.

26 Applicant was able to secure amended claims by the Internal Revenue Service and The  
27 County of Santa Clara whereby each asserted no further claim against the Debtor.

1 Applicant and Debtor's efforts to resolve the claim of BPB were substantially more  
2 complicated and in the absence of an informal agreement Debtor pursued its objections to  
3 BPB's claim. Applicant assisted Debtor to prepare and file objections to the BPB claim,  
4 prepare the objections for trial, and prosecute the objections at trial. Following the court's  
5 ruling on the primary portions of BPB's claim, Applicant reviewed BPB's addendum to  
6 claim, consulted with Debtor, and prepared and filed an objection thereto.

7 Applicant, subsequent to the court's ruling on the primary portions of BPB's claim but  
8 prior to any ruling on the addendum to claim, renewed efforts to resolve the claim, worked  
9 with Debtor and BPB's counsel to reach a stipulated compromise, and secured court approval  
10 of the compromise and Debtor's exit from bankruptcy.

11 In this regard, Applicant has generally categorized the Creditor Claims Analysis/Claims  
12 Objections into several sub-categories, namely Non-BPB Claims, Pre-Trial Claim Objection,  
13 Pre-Trial Claim Objection Discovery/Pleadings, Trial Claim Objection-General Pleading,  
14 Trial Claim Objection-Evidence Pleading, Trial Claim Objection-Legal Pleading, Trial Claim  
15 Objection-Trial, Post-Trial Claim Objection Briefing, Post-Trial Claim Addendum  
16 (Attorneys Fees), Claim Objection Compromise, and Claim Objection Miscellaneous. In  
17 addition

18 In connection with the foregoing, during the Application Period, CGS expended a total  
19 of \_\_\_\_\_ hours, at a cost to the estate of \$\_\_\_\_\_.

## 20 **IX. Reorganization.**

21 Debtor is a single asset real estate entity. Therefore this bankruptcy case was subject to  
22 the rules and procedures associated with single asset real estate case. Pursuant thereto  
23 Applicant prepared and timely filed a disclosure statement and plan. Initially Debtor's plan  
24 was dependent on two main issues, namely use of Debtor's rental income to address and  
25 resolve the pending environmental issues and potential resolution with BPB. Specifically,  
26 Debtor's plan was to resolve the environmental issue with the real property, sell the real  
27 property, and pay BPS and all creditors. Absent the filing of the disclosure statement and  
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1 plan Debtor would have been subject to a loss of the automatic stay and foreclosure of BPB's  
2 lien.

3 After sale of Debtor's Real Property Debtor, with the assistance of Applicant, submitted  
4 and pursued an amended plan which would allow it to pay all creditors in full after any  
5 disputed claims were resolved. In this regard, Debtor only needed to resolve BPB's disputed  
6 claim. Notwithstanding the apparent simplicity of Debtor's plan, BPB asserted numerous  
7 objections in an apparent effort to prevent any reorganization and to gain tactical advantage  
8 over Debtor.

9 In addition, BPB submitted and pursued its own plan which would only allowed BPB to  
10 vote, paid BPB in full, Debtor to pay all other creditors in full, but denied any other party the  
11 right to vote, denied Debtor the right to pursue independent claims against BPB, and required  
12 Debtor and its members to defend BPB from claims from unidentified third parties. As  
13 BPB's plan only served BPB, Applicant, at Debtor's instruction and for the benefit of the  
14 Debtor and others, objected to BPB's plan.

15 Applicant prepared and filed several pleadings and attended several hearings relating to  
16 Debtor's and BPB's respective disclosure statements and plans and relative to objections  
17 asserted by one another, the US Trustee, and the court. After the court issued orders  
18 approving two disclosure statements and issued an order regarding balloting and  
19 confirmation Applicant assisted Debtor in the balloting, related briefing requested by the  
20 court, and other aspects of the confirmation process. The confirmation process was ready for  
21 final hearing or trial when it was placed on hold pending the Debtor's compromise with BPB  
22 and anticipated dismissal.

23 In connection with the foregoing, during the Application Period, CGS has expended a  
24 total of \_\_\_\_\_hours, at a cost to the estate of \$\_\_\_\_\_.

25 **X. Fee Application.**

26 Pursuant to the Guidelines Applicant seeks compensation for the First Application and  
27 the related Order Granting First Application and this Application.

On December 12, 2013 the court issued an Order Granting First Interim Application for Compensation And Reimbursement of Expenses by Attorney for Debtor (Docket#118) ("Order Approving First Application"). Applicant did not previously ask the court for compensation for the First Application. Applicant previously spent approximately 11.9 hours preparing the First Application, including responding to an objection from creditor BPB and dealing with cash collateral assertions, at a cost of approximately \$5,057.50 (said total excludes any time to attend said hearing and file a related order). The Guidelines provide for attorneys fees of \$3,575.25. (Per Guidelines, \$3,575.25 is 5% of that application sum (\$71,505.00 x 5%). Pursuant to the Guidelines Applicant seeks compensation of \$3,575.25 for the First Application.

Applicant spent 13.0 hours preparing this Final Application, including 1.0 hour allocated to attend the hearing, at a cost of approximately \$5,525.00. (Per Guidelines, \$\_\_\_\_\_ is 5% of the application sum).

Therefore, by way of this Final Application Applicant moves for approval of \$3,575.25 in attorneys fees for preparation of the First Application and approval of \$5,525.00 in attorneys fees for preparation of the Final Application.

#### **XI. Conclusion.**

In the course of representation in these matters during the Application Period, Applicant has devoted hours of professional services, as indicated on Applicant's project billing statements, which are attached as Exhibit A. The Statement identifies the individuals who have performed specific services and is summarized as follows:

Scott L. Goodsell (SLG)	_____	475.00/hr.
Scott L. Goodsell (SLG)	_____	No Charge
William J. Healy (WJH)	_____	425.00/hr.
William J. Healy (WJH)	_____	No Charge.
Kari L. Silva <sup>2</sup> (KSL)	_____	300.00/hr.
Kari L. Silva (KSL)	_____	No Charge.

In view of the time expended and the responsibilities assumed during the Application Period,

<sup>2</sup>Kari L. Silva subsequently changed her name to Kari S. Bowyer.

1 Applicant respectfully submits that it expended hours and the reasonable value of its services  
2 hereinabove set forth is \$\_\_\_\_\_.

3 Applicant also expended the sum of \$3,271.08 for court fees, transcripts, photocopying,  
4 postage, telephone and other costs during the Application Period, as set forth in Exhibit B.  
5 All requests for costs are based on the Guidelines for Compensation of Professionals.

6 Applicant believes that the services so rendered and costs so incurred herein were  
7 necessary and that the fees and costs requested constitute reasonable and necessary fees  
8 expended on behalf of the estate. In accordance with its Rule 2016(b) Disclosure of  
9 Compensation, Applicant previously received payment of \$73,556 (Attorney's fees of  
10 \$71,505 and costs of \$2,051) pursuant to the First Application and Order Approving First  
11 Application and a retainer of \$20,000.00 from Andrew Lewis in connection with the Chapter  
12 11 case. No part of the monies previously received by Applicant has been shared with any  
13 person, and no agreement or understanding exists between Applicant and any other person  
14 for the sharing of compensation received or to be received for services rendered in  
15 connection with this case, except with the members and associates of Applicant's law firm.

16 Debtor's June 2014 Monthly Operating Report ("MOR") (Docket#228) indicates  
17 it currently holds \$3,540,047.05 in its Blocked DIP Account and an additional \$198,303.86  
18 in a separate DIP Account for a total of approximately \$3,738,351.00. Debtor's July MOR  
19 (Docket#244) indicates it holds approximately \$3,540,017 in its Blocked DIP Account and  
20 an additional \$198,304 in a separate DIP Account for total of approximately \$3,738,351.00.  
21 Pursuant to Debtor's compromise it, upon court approval, intends to pay creditor BPB  
22 \$850,000. Special Counsel and creditor Rossi, Hamerslough ("Rossi Firm") are owed monies  
23 as special counsel and as creditor. While Debtor prefers to pay the Rossi Firm after dismissal,  
24 currently Rossi Firm has requested payment prior to dismissal of this case. The total sum  
25 payable to the Rossi Firm is less believed to be less than \$25,000. Other claimants are owed  
26 less than \$1,000,000. Therefore, Debtor has sufficient funds to pay on this Application and  
27 without cash collateral concerns.

1       WHEREFORE, Applicant prays that this court enter an order (I) approving as  
2 interim and final compensation those Chapter 11 attorneys fees incurred and costs expended  
3 by Applicant during the period of November 1, 2013 through the date of the hearing on this  
4 Application (“Application Period”), namely attorneys fees of \$\_\_\_\_\_ and costs of  
5 \$3,271.08; (ii) approving the Order Granting First Interim Application for Compensation  
6 And Reimbursement of Expenses by Attorney for Debtor (Docket#118) (“Order Approving  
7 First Application”) as final; (iii) approving \$3,575.25 in attorneys fees for preparation of the  
8 First Application; (iv) approving \$5,525.00 in attorneys fees for preparation of the Final  
9 Application; (v) authorizing and ordering Debtor to pay to these sums to Applicant; and (vi)  
10 for such further relief as this court deems proper.

11 DATED: September 2, 2014

CAMPEAU GOODSSELL SMITH  
By: William J. Healy  
William J. Healy  
Attorneys for Debtor

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4 **XII. Certification by Attorney for Debtor.**

5 I, William J. Healy, say:

6 1. I am an attorney with the law firm of Campeau Goodsell Smith, attorneys of  
7 record for debtors herein. I make this declaration in support of said law firm's application  
8 for interim compensation and reimbursement of expenses as attorneys for debtor in this  
9 Chapter 11 case. By way of this certification I do not intend to waive any privileges,  
10 including the attorney client and work product privileges. If called as a witness, I would  
11 competently testify as follows:

12 2. In accordance with its Disclosure of Compensation and Application for Order  
13 Appointing Counsel for Debtor (Docket#21) and Debtor's Ex Parte Application to Employ  
14 Campeau Goodsell Smith, L.C. as Counsel For Debtor (Docket#24 and related pleadings),  
15 Debtor and Applicant agreed to an initial retainer in the sum of \$20,000.00. Applicant  
16 received \$20,000 towards this retainer. On August 26, 2013 the court issued an Order  
17 Appointing Counsel for Debtor (Docket#58).

18 3. No part of the monies previously received by Applicant have been shared with  
19 any person, and no agreement or understanding exists between Applicant and any other  
20 person for the sharing of compensation received or to be received for services rendered in  
21 connection with this case, except with the members and associates of Applicant's law firm.

22 4. Debtor's June 2014 Monthly Operating Report ("MOR") (Docket#228) indicates  
23 it currently holds \$3,540,047.05 in its Blocked DIP Account and an additional \$198,303.86  
24 in a separate DIP Account for a total of approximately \$3,738,351.00. Debtor's July MOR  
25 (Docket#244) indicates it holds approximately \$3,540,017 in its Blocked DIP Account and  
26 an additional \$198,304 in a separate DIP Account for total of approximately \$3,738,351.00.  
27 Pursuant to Debtor's compromise it intends to pay creditor BPB \$850,000. Special Counsel  
28

1 and creditor Rossi, Hamerslough ("Rossi Firm") are owed monies as special counsel and as  
2 creditor. While Debtor prefers to pay the Rossi Firm after dismissal, currently Rossi Firm has  
3 requested payment prior to dismissal of this case. The total sum payable to the Rossi Firm is  
4 less believed to be less than \$25,000. Other claimants are owed less than \$1,000,000.  
5 Therefore, Debtor has sufficient funds to pay on this Application and without cash collateral  
6 concerns.

7 5. I prepared the accompanying application based on my own personal knowledge,  
8 my familiarity and review of this firm's practices, files, and records, and my review of the  
9 court's files and records and believe its contents to be true and correct.

10 6. Attached hereto as exhibits are true and correct copies of the following:

11 Exhibit A Applicant's Project Billing Summaries;

12 Exhibit B Applicant's Expenses;

13 Exhibit C Transmittal.

14 I declare under penalty of perjury that the foregoing is true and correct and that this  
15 declaration was executed at San Jose, California, on September 2, 2014

16 /s/ William J. Healy  
17 William J. Healy

18 **XIII. Debtor-in-Possession's Statement.**

19 At this time Applicant does not have a formal statement of the Debtor.  
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